

Decision: \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of  
GTCR ONVOY HOLDINGS LLC,  
COMMUNICATIONS INFRASTRUCTURE  
INVESTMENTS, LLC, ONVOY, LLC  
(U6487C) And BROADVOX-CLEC, LLC  
(U7160C) To Authorize the Transfer of  
Control of Onvoy, LLC and  
Broadvox-CLEC, LLC.

Application 16-01-007  
(Filed January 14, 2016)

**PROPOSED DECISION AUTHORIZING TRANSFER OF CONTROL OF  
ONVOY, LLC AND BROADVOX-CLEC, LLC TO  
GTCR ONVOY HOLDINGS, LLC**

**Summary**

This decision grants the unopposed joint application filed January 14, 2016, by GTCR Onvoy Holdings, LLC; Communications Infrastructure Investments, LLC; Onvoy, LLC (U6487C) and Broadvox-CLEC, LLC (U7160C) (together, Applicants) for authorization, pursuant to Public Utilities Code Section 854,<sup>1</sup> to transfer control of Onvoy, LLC and Broadvox-CLEC, LLC to GTCR Onvoy Holdings LLC (the Application). This proceeding is closed.

**1. Parties to the Transaction**

GTCR Onvoy Holdings, LLC (GTCR) is a limited liability company organized under the laws of Delaware with its principal business office located at

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<sup>1</sup> All Section references are to the Public Utilities Code, unless otherwise stated.

300 N. LaSalle Street, Suite 5600, Chicago, Illinois 60654.<sup>2</sup> It is a holding company with no operations.<sup>3</sup> It currently owns approximately ten percent of Communications Infrastructure Investments, LLC.

Communications Infrastructure Investments, LLC (CII) is a limited liability company organized under the laws of Delaware with its principal business office located at 1805 29th Street, Boulder, Colorado 80301.<sup>4</sup>

Onvoy, LLC (U6487C) (Onvoy) is a limited liability company organized under the laws of Minnesota with its principal business office located at 10300 6th Avenue North, Plymouth, Minnesota 55441. It is a wholly owned direct subsidiary of CII.<sup>5</sup> Onvoy holds a certificate of public convenience and necessity (CPCN) to provide limited facilities-based local exchange and interexchange telecommunications services.<sup>6</sup>

Broadvox-CLEC, LLC (U7160C) (Broadvox) is a limited liability company organized under the laws of Delaware with its principal business office located at 10300 6th Avenue North, Plymouth, Minnesota 55441. It is a wholly owned direct subsidiary of Onvoy. Broadvox holds a CPCN to provide resold and

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<sup>2</sup> See Application at pages 3, 4 and 6.

<sup>3</sup> GTCR is owned by an investment fund "GTCR Fund X/A L.P.," which will own 61.21% of GTCR following the transfer of control.

<sup>4</sup> Application at pages 4 and 6.

<sup>5</sup> *Id.*

<sup>6</sup> See Decision (D.)01-03-021 in Application (A.)00-10-038. The CPCN was originally granted to Local Fiber, LLC on March 15, 2001, then transferred Zayo Enterprise Networks, LLC (ZEN) effective February 11, 2010. The CPCN was transferred to Onvoy pursuant to an advice letter filed by ZEN on or about November 20, 2011. ( Application, footnote 3 at page 7)

limited facilities-based local exchange and interexchange telecommunications services in California.<sup>7</sup>

## **2. Proposed Transaction**

Under the Applicants' proposed transaction, CII will relinquish control of Onvoy and Onvoy's wholly owned subsidiary Broadvox.<sup>8</sup> Onvoy will become a wholly owned subsidiary of GTCR. Applicants represent that Broadvox and Onvoy will continue to be managed by Onvoy, supplemented with additional management resources of GTCR.<sup>9</sup>

Applicants indicate that the transaction will not result in any modifications to Broadvox and Onvoy's existing tariffs, price lists or customer contracts. Applicants also represent that customers will continue to receive all existing services at the same rates, terms and conditions after the transfer of control.<sup>10</sup>

Applicants further represent that acquisition by GTCR will permit Broadvox and Onvoy to have access to additional financial resources which will enable them to better meet the needs of their customers and to better compete in the telecommunications marketplace.<sup>11</sup>

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<sup>7</sup> See D.10-12-011, in which the California Public Utilities Commission (Commission) granted Broadvox a CPCN to provide local exchange service in the service territories of Pacific Bell Telephone Company d/b/a AT&T California, Verizon California Inc., SureWest Telephone and Citizens Telecommunications Company of California, Inc., d/b/a Frontier Communications of California.

<sup>8</sup> Onvoy's other subsidiaries are Zayo Enterprise Networks, LLC (ZEN), Broadvox, LLC, Minnesota Independent Equal Access Corporation, VOIP360, Inc., Emergency Networks, LLC, RadiantIQ, LLC and Layered Communications, LLC.

<sup>9</sup> See Application at page 11 and Exhibit I. Exhibit I reflects a six-person executive management team at Onvoy and two additional individuals who are presently management at GTCR.

<sup>10</sup> See Application, at page 13.

<sup>11</sup> *Id.*

### 3. Procedural Matters

The Applicants filed the application on January 14, 2016, along with Exhibits A through I.<sup>12</sup>

Notice of the Application was published in the Commission's Daily Calendar on January 27, 2016. The application is unopposed.

### 4. Discussion

The Applicants request Commission authorization pursuant to § 854 for the transfer of control of Broadvox and Onvoy to GTCR. Section 854 states, in relevant part, as follows:

No person or corporation...shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the commission...Any merger, acquisition, or control without that prior authorization shall be void and of no effect.

Section 854 requires that the Commission review a proposed transaction, before it takes place, in order to assure that it is in the public interest. The Commission has broad discretion under § 854 to approve or reject a proposed

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<sup>12</sup> The exhibits filed with the Application are: **Exhibit A** –Certificate of Formation of GTCR; **Exhibit B** –Certificate of Formation of CII; **Exhibit C** – Formation Documents and Authorization to Transact Business of Onvoy; **Exhibit D** – Formation Documents and Authorization to Transact Business of BV-CLEC; **Exhibit E** – Charts of Pre- and Post-Transactions Corporate Structure of Applicants; **Exhibit F** – Agreement; **Exhibit G** – Financial Information for Transferree - GTCR; **Exhibit H** – Financial Information for Onvoy, and **Exhibit I** – Professional Biographies of Key Management Personnel.

transaction. If necessary and appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.<sup>13</sup>

When a company that does not possess a CPCN desires to acquire control of a company or companies that do possess a CPCN, the Commission will scrutinize the acquiring company as if it were a new applicant seeking the type of CPCN held by the company being acquired.

As discussed below, GTCR meets the financial requirements applicable to CPCN applicants who desire to provide limited facilities-based local exchange and interexchange telecommunications services. In addition, the transfer of control will not present any detriment to the public interest because, as represented in the application, the transaction will not have any effect on management of Broadvox or Onvoy, will not change their existing tariffs, and will not affect the rates and services provided to their existing customers.

#### **4.1. Financial Qualifications**

An applicant who desires to operate as a limited facilities-based provider of telecommunications services must demonstrate that it has a minimum of \$100,000 in cash or cash equivalent for operations of the company, plus the costs of deposits to be paid to other carriers.<sup>14</sup>

Onvoy holds a CPCN to provide limited facilities-based local exchange and interexchange telecommunications services, while Broadvox holds a CPCN to provide resold and limited facilities-based local exchange and interexchange telecommunications services in California. Therefore, the acquiring company

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<sup>13</sup> D.01-06-007, 2001 Cal. PUC LEXIS 390, \*24.

<sup>14</sup> An applicant who desires to operate as a provider of resold interexchange services must demonstrate that it has a minimum of \$25,000 in cash or cash equivalent for operations of the company, plus the costs of deposits to be paid to other carriers.

GTCR must demonstrate that it possesses a minimum of \$100,000 in cash or cash equivalent to meet the Commission's financial requirements.

Acceptable forms of financial documentation include an audited balance sheet and income statements demonstrating sufficient cash flow or, in the alternative, one of several other cash equivalent financial instruments.<sup>15</sup>

In confidential exhibits to the application, Applicants have provided financial documents which demonstrate that GTCR obtained a Certificate of Deposit of \$100,000 with a reputable financial institution concurrent with the filing of this application. Accordingly, GTCR demonstrates that it meets the Commission's financial requirements for acquiring Broadvox and Onvoy.<sup>16</sup>

#### **4.2 Technical Qualifications**

GTCR, the acquiring entity, is required to make a reasonable showing of technical expertise in telecommunications or a related business. Since, after the transfer of control, the day-to-day management of Broadvox and Onvoy will remain the same<sup>17</sup>, the Commission's requirement to demonstrate technical expertise in telecommunications is satisfied.

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<sup>15</sup> See D.95-12-056, Appendix C (applicable to CLEC applications) and D.91-10-041, Appendix A (applicable to NDIEC applications) as modified by D.13-05-035.

<sup>16</sup> The Application also includes an Exhibit H - which includes an audited financial statement for Onvoy for June 30, 2015 and 2014. Although such a statement is not strictly required for purposes of authorization hereunder, the statement provides additional information concerning the business of Onvoy and its affiliated entities, including confirmation that Onvoy became a wholly owned subsidiary of CII in June 2014, and that Onvoy acquired Broadvox in September 2015.

<sup>17</sup> Exhibit I to the Application contains biographies of key Onvoy management, including: Fritz Hendricks, President (30 years in telecommunications industry), Surendra Saboo, Executive Vice President/Chief Operations Officer (28 years in telecommunications industry) and Scott Sawyer, General Counsel (23 years representing telecommunications carriers). Biographies of key GTCR management include Stephen Master, Vice President (background

*Footnote continued on next page*

### 4.3 Certifications

Applicants are required to disclose certification issues in other jurisdictions as well as in California. Failing to disclose these or making a false certification to the Commission is a violation of 1.1 of the Commission's Rules of Practice and Procedure.

Section 10 of the application provides the Applicants' certification that no affiliate, officer, director, partner, agent or owner (directly or indirectly) of more than 10 percent of Applicants, or any person acting in management capacity for Applicants, has: (a) held a similar position with a company that filed for bankruptcy; (b) has been personally found liable or held a similar position with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers of others; (c) been convicted of a felony; (d) been (to his/her knowledge) the subject of a criminal referral by a judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of sections 17000 et seq., 17200 et seq., or 17500 et seq. of the California Business and Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; or (g) been found to have violated any statute, law or rule pertaining to public utilities or other regulated industries; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of

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as an analyst in telecommunications, mergers and acquisitions) and Lawrence Fey, Principal (background in mergers, acquisitions and restructuring).

monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.<sup>18</sup>

The Applicants disclose that Onvoy had certificates cancelled in 2012 in both Iowa and Oregon but is currently in good standing in both jurisdictions.<sup>19</sup> Broadvox's certificate was cancelled in Ohio in 2014, but is currently in good standing.<sup>20</sup>

The disclosures reveal compliance issues in three jurisdictions but also demonstrate that these were accorded appropriate attention by the carriers to achieve correction. We do not find that the disclosures warrant denial of authorization for the transfer of control requested here, particularly since Broadvox and Onvoy have fully complied with Commission requirements.

#### **4.4 California Environmental Quality Act (CEQA)**

In circumstances where telecommunications providers seek to construct or install facilities, CEQA requires the Commission to act as the designated lead agency, and to assess the potential environmental impact of the project<sup>21</sup> to

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<sup>18</sup> This certification is required under D.13-05-035 and must be verified, under penalty of perjury by an officer or principal of the company. The application attaches notarized verifications, signed under penalty of perjury, by Stephen Master, the Senior Vice President and Secretary of GTCR; Daniel P. Caruso, the President and Chief Executive Officer of CII and by Scott Sawyer, the General Counsel of Onvoy, Broadvox, ZEN and Minnesota Independent Equal Access Corporation. The verifications certify that each of them is familiar with the contents of the entire application (including section 10) and verify that the application is true and correct. Accordingly, the certifications satisfy the requirements of D.13-05-035.

<sup>19</sup> Application page 12.

<sup>20</sup> *Id.*

<sup>21</sup> A project is defined as any "activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." *See* California Public Resources Code, Section 21065.



ensure that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible.

The transfer of control that is the subject of this application proposes no new construction and requests no authority for future construction. Applicants represent that this is entirely a “paper transaction,” and that there is no potential that the transaction described herein would have any significant impact on the environment.<sup>22</sup> Accordingly, the application is exempt from review under CEQA. Applicants must submit a new application should they make future plans to construct facilities other than those within the limited facilities-based authority granted previously by the Commission.

#### **4.5 Summary**

Based on the above analysis of financial and technical qualifications, and after determination that environmental review is not necessary, we find that the transaction is not adverse to the public interest and grant the application pursuant to § 854.

#### **5. Categorization and Need for Hearings**

In Resolution ALJ 176-3371, dated January 28, 2016, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received, and it is not necessary to disturb the preliminary determinations.

#### **6. Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code

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<sup>22</sup> See Application at page 10, footnote 8 citing D.06-02-033 and other Commission cases involving transfers of control which were deemed exempt from review under CEQA.

and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

#### **7. Motion for Confidentiality**

Pursuant to Pub. Util. Code § 583 and General Order 66-C, the joint Applicants request that Exhibits F, G and H to the application be kept under seal. Applicants represent that the information is sensitive, and that disclosure could jeopardize the acquisition transaction and/or potentially place one or more parties to the transaction at an unfair business disadvantage.

We have granted similar requests in the past and will do so here. The financial information will be kept under seal for a period of two years after the effective date of this order.

#### **8. Assignment of Proceeding**

Carla J. Peterman is the assigned Commissioner and Patricia B. Miles is the assigned Administrative Law Judge in this proceeding.

#### **Findings of Fact**

1. The Commission reviews requests for transfer of control of regulated utilities under Section 854 in order to ensure that each transfer is in the public interest and is not adverse to the interests of customers.

2. An applicant seeking approval to acquire a telecommunications provider is subject to the same scrutiny given to an applicant seeking initial authority to provide such services within California.

3. Onvoy (U6487C) is a limited liability company organized under the laws of Minnesota, which holds a CPCN to provide limited facilities-based local exchange and interexchange telecommunications services in California by virtue of Decision (D.)01-03-021 in Application 00-10-038.

4. Broadvox (U7160C) is a limited liability company organized under the laws of Delaware. It is a wholly owned subsidiary of Onvoy, but holds its own CPCN to provide resold and limited facilities-based local exchange and interexchange telecommunications services in California, by virtue of D.10-12-011.

5. CII is a limited liability company organized under the laws of Delaware, which seeks to relinquish ownership of Onvoy.

6. GTCR, a limited liability company organized under the laws of Delaware, is a holding company with no operations which seeks authorization to acquire control of Onvoy and Broadvox.

7. GTCR does not hold a CPCN authorizing the company to provide telecommunications services in California.

8. If the transfer of control is approved, Onvoy and Broadvox will retain their current day to day management, and will continue to provide services to California customers under the same terms and for the same rates as they provided prior to the acquisition.

9. Applicants have filed financial documents under seal to demonstrate that GTCR meets the Commission's financial requirements for issuance of a CPCN authorizing the provision of limited facilities-based local exchange and interexchange telecommunications services in California.

10. By virtue of existing day to day management of Onvoy and Broadvox, GTCR has demonstrated sufficient telecommunications expertise to satisfy Commission requirements.

11. Pursuant to Rule 11.4, Applicants have filed a motion for leave to file confidential materials contained in Exhibits F, G and H to the application, under seal.

12. Notice of this application appeared on the Commission Daily Calendar on January 27, 2016.

13. No protests to this application were filed.

14. No hearing is necessary.

**Conclusions of Law**

1. Applicants have demonstrated that GTCR meets the Commission's financial requirements for approval of a transfer of control.

2. The transfer of control is not adverse to the public interest because Onvoy and Broadvox will continue to provide the services to California customers under the same terms and for the same rates as they provided prior to the acquisition.

3. Because Onvoy and Broadvox will retain their current day to day management after acquisition, GTCR will have sufficient technical expertise in telecommunications to meet Commission requirements.

4. Applicants' motion to file Exhibits F, G and H to the application under seal should be granted.

5. Since this matter is uncontested, the decision should be effective on the date it is signed.

**ORDER**

**IT IS ORDERED** that:

1. The joint application of GTCR Onvoy Holdings, LLC; Communications Infrastructure Investments, LLC; Onvoy, LLC and Broadvox-CLEC, LLC for authorization to transfer control of Onvoy, LLC and Broadvox-CLEC, LLC to GTCR Onvoy Holdings, LLC, is approved.

2. After acquisition by GTCR Onvoy Holdings, LLC, Broadvox-CLEC, LLC and Onvoy, LLC will remain subject to all of the requirements previously set forth by the Commission in Decisions (D.) 01-03-021 and D.10-12-011 under which this Commission granted them certificates of operating authority. In addition, Broadvox-CLEC, LLC and Onvoy, LLC remain subject to the performance bond requirements in Decision 13-05-035 and must maintain the performance bonds that each currently has on file, including the requirement that each must submit a Tier 1 advice letter annually, not later than March 31.

3. Broadvox-CLEC, LLC and Onvoy, LLC must not allow their performance bond to lapse during any period of their operation. Pursuant to D.13-05-035, the Commission may revoke a Certificate of Public Convenience and Necessity if a carrier is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

4. Within five (5) days of the closing of the transaction, GTCR Onvoy Holdings, LLC, Onvoy, LLC and Broadvox-CLEC, LLC shall notify the Commission's Communications Division, by letter, of the consummation of the transaction.

5. The joint motion of GTCR Onvoy Holdings, LLC; Communications Infrastructure Investments, LLC; Onvoy, LLC and Broadvox-CLEC, LLC to file Exhibits F, G and H to the application under seal is granted. The information will remain under seal for a period of two years after the date of issuance of this order. During this two-year period, this information may not be publicly disclosed except on further California Public Utilities Commission order or Administrative Law Judge ruling. If any of the joint applicants or their

successors in interest believe that it is necessary for this information to remain under seal for longer than two years, they or their successors in interest may file a new motion at least 30 days before the expiration of this protective order.

6. Application 16-01-007 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.